

Steve Cape
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Montana Coalition for Safety and Justice
Information and Testimony

HB 236 - A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING A TIME LIMIT REGARDING WHEN CONSUMER REPORTS MAY INCLUDE CONVICTION INFORMATION; AND AMENDING SECTION 31-3-112, MCA."

Mr. Chairman and Members of the committee, my name is Steve Cape, I am a Director of the Montana Coalition for Safety and Justice and I live in Great Falls.

I rise in opposition to House Bill 236, I speak from experience as a certified credit counselor and certified financial educator. This bill should not see the light of day, it is bad for Montana.

When the current version of MCA 31-3-112 was written, it was conceived with the understanding that everyone needs and is expected to move beyond their mistakes if they are to become law abiding citizens. That community safety is not achieved by permanently branding individuals for mistakes that occurred more than seven years in the past.

This bill does not protect employers or the community, what it does is place a lifetime financial handicap on half of all Montanans and a significant lifetime financial handicap on approximately sixteen percent of Montana's citizens. Every Montanan who seeks to purchase a home, a car, apply for a credit card, rent an apartment, or start a business with borrowed funds will be handicapped. A credit report is used by banks, landlords, and other lenders to determine credit worthiness that is its function.

This bill creates the potential for lending based not on the ability to pay but on the prejudices of the lender. A juvenile trespass or criminal mischief could bar that person and their future family from owning a home or renting that apartment. This bill takes the punishment for a misdemeanor from a fine to a lifetime handicap. A family may be denied a mortgage based on a conviction that occurred 20 years ago.

The reasons given for the creation of this bill are misplaced; a credit report is generally not used to perform a background check. A background check will show felony history nationwide, a credit report may not show information outside of a credit reporting region and information would vary by reporting agency based on that agencies policies and marketing. Simply put each credit reporting agency's handling of public record information is different. The public record section of a report which would contain the information covered by this bill is also the most prone for misinformation due to the type of data available from court records. Court records do not contain social security numbers, dates of birth or current addresses necessary to properly link a record to the right person. I have often seen this in civil judgment notations.

A background check is available online from The Montana Department of Justice for \$11.50. A finger print based background report is available for \$10.00. I have included in my submitted testimony a copy

of the Department of Justice website page that explains how to request a background check online or by mail.

If an employer is concerned about an applicant then a background check is the appropriate method for checking an applicant's background not a credit report. The leading reason for using credit report to check background is to skirt equal employment, I can deny employment due to a credit score.

It is well documented that minorities at all levels of offences are disproportionately represented as defendants in our criminal system and represent significant numbers of individuals with lower credit scores.

This bill if passed will complicate the hiring process for employers. With the use of credit reports to make hiring decisions any negative determination may require a notice to the applicant similar to a credit denial letter from a lender. Employers failing to provide such letters could face action based on their failure to comply with complicated Federal Credit Laws.

Employers may mistakenly feel protected in rejecting an applicant solely based on the presence of a criminal record of any type by the passage of this bill however it's an Equal Employment Opportunity Commission policy, specifically to prevent a conviction record from being used as a means to effect racial discrimination. They don't state that an employer should never use a conviction as a basis to deny employment, but that they should have a valid basis for doing so (e.g., banks have good reasons not to hire people who have been convicted of bank robbery).

Communities are made safe by employed individuals, homeowners, productive members of our society, we are not made safer when we create laws that serve to provide cover for racial discrimination, handicap qualified workers from employment and deny the American dream of home ownership and financial stability to our citizens.

This bill is bad news for Montanans; small business let us give it a clean burial before it buries us.



MONTANA DEPARTMENT OF JUSTICE • LAW ENFORCEMENT

Background Checks

Background checks, sometimes known as records checks or criminal history checks, are available to local, state and federal law enforcement agencies and the general public.

- **Law enforcement organizations** – may receive all criminal history information that is available in Montana and across the nation, as long as the information is requested for criminal justice purposes.
- **General public** – may receive arrest and prosecutor/court information on felony charges and misdemeanor charges, but information is limited by Montana's privacy laws. Criminal records that have been deferred and later dismissed cannot be released to the public.

Certain information may be available from local law enforcement and other agencies but is **not** available from Montana Criminal Records. For example, requests for police reports, court transcripts, warrant information and probation/parole information should be directed to the appropriate local law enforcement agency or court.

A background check includes only criminal history information. It does not include, for example, consumer credit or immigration status information. It includes driving-related information only as it relates to felony arrests. Driving records are available through the Motor Vehicle Division.

Types of Background Checks

There are two types of background checks:

- **Name-based checks** – a search of Montana public criminal history record information only, using an individual's name, date of birth and Social Security number.
- **Fingerprint checks** – accurate, comprehensive information, including access to criminal history information in Alaska, Idaho, Nevada, Oregon, Utah and Wyoming.

Online Requests (for name-based checks only)

For the general public:

1. Go to [Criminal History Online Public Record Search](#) and click on the Public Users "Start Service" button.
2. To search, you must submit the individual's complete name and complete date of birth. Social Security numbers are optional but are encouraged as they allow a more thorough search. Up to four alias names may be included in the search without further cost. You must also enter your name in order to comply with Section 44-5-215 of the Montana Code Annotated.
3. You may pay the \$11.50 fee for each record search by credit card or eCheck.

For registered users:

1. Go to [Criminal History Online Public Record Search](#) and click on the Registered Users "Start Service" button.
2. Enter your username and password.
3. You will receive monthly bills that you may choose to pay by credit card, electronic payment or invoice.

To become a registered user, go to [Criminal History Online Public Record Search](#) and click the "Become a Registered User" button.

Mail Requests (for fingerprint or name-based checks)

Requests for background checks based on fingerprint cards must be submitted by mail.

1. Requests for background checks should include:
 - the name of the person being checked and, if possible, any aliases or maiden names
 - the person's date of birth
 - his or her Social Security number
2. Specify whether the request is for a name-based or fingerprint check. For a fingerprint check, the requester must include an applicant fingerprint card. Blank cards are available from local law enforcement offices or from Montana Criminal Records (see contact information below).
3. Enclose:
 - a self-addressed stamped envelope
 - the \$10 processing fee for each individual to be checked must be paid by check or money order
4. Mail the complete request to Montana Criminal Records.

Contact

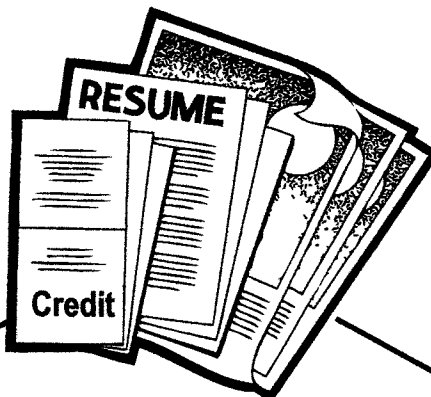
Montana Criminal Records
 303 North Roberts
 P.O. Box 201403
 Helena, MT 59620-1403

Law Enforcement

Criminal History Online
Public Record SearchContact Montana Criminal
Records

FTC FACTS for Business

Using Consumer Reports: What Employers Need To Know



- *Your advertisement for cashiers nets 100 applications. You want credit reports on each applicant. You plan to eliminate those with poor credit histories. What are your obligations?*
- *You are considering a number of your long-term employees for major promotions. Can you check their credit reports to ensure that only financially responsible individuals are considered?*
- *A job candidate has authorized you to obtain a credit report. The applicant has a poor credit history. Although the credit history is considered a negative factor, it's the applicant's lack of relevant experience that's more important to you. You turn down the application. What procedures must you follow?*

As an employer, you may use consumer reports when you hire new employees and when you evaluate employees for promotion, reassignment, and retention — as long as you comply with the Fair Credit Reporting Act (FCRA). Sections 604, 606, and 615 of the FCRA spell out your responsibilities when using consumer reports for employment purposes.

- a notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished, and his or her right to an additional free consumer report from the agency upon request within 60 days.

Certifications to Consumer Reporting Agencies.

Before giving you an individual's consumer report, the CRA will require you to certify that you are in compliance with the FCRA and that you will not misuse any information in the report in violation of federal or state equal employment opportunity laws or regulations.

In 1998, Congress amended the FCRA to provide special procedures for mail, telephone, or electronic employment applications in the trucking industry. Employers do not need to make written disclosures and obtain written permission in the case of applicants who will be subject to state or federal regulation as truckers. Finally, no pre-adverse action disclosure or Section 615(a) disclosure is required. Instead, the employer must, within three days of the decision, provide an oral, written, or electronic adverse action disclosure consisting of: (1) a statement that an adverse action has been taken based on a consumer report; (2) the name, address, and telephone number of the CRA; (3) a statement that the CRA did not make the decision; and (4) a statement that the consumer may obtain a copy of the actual report from the employer if he or she provides identification.

In Practice...

You advertise vacancies for cashiers and receive 100 applications. You want just credit reports on each applicant because you plan to eliminate those with poor credit histories. What are your obligations?

- You can get credit reports — one type of consumer report — if you notify each applicant in writing that a credit report may be requested and if you receive the applicant's written consent. Before you

reject an applicant based on credit report information, you must make a **pre-adverse action disclosure** that includes a copy of the credit report and the summary of consumer rights under the FCRA. Once you've rejected an applicant, you must provide an **adverse action notice** if credit report information affected your decision.

You are considering a number of your long-term employees for a major promotion. You want to check their consumer reports to ensure that only responsible individuals are considered for the position. What are your obligations?

- You cannot get consumer reports unless the employees have been notified that reports may be obtained and have given their written permission. If the employees gave you written permission in the past, you need only make sure that the employees receive or have received a "separate document" notice that reports may be obtained during the course of their employment — no more notice or permission is required. If your employees have not received notice and given you permission, you must notify the employees and get their written permission before you get their reports.

In each case where information in the report influences your decision to deny promotion, you must provide the employee with a **pre-adverse action disclosure**. The employee also must receive an **adverse action notice** once you have selected another individual for the job.

A job applicant gives you the okay to get a consumer report. Although the credit history is poor and that's a negative factor, the applicant's lack of relevant experience carries more weight in your decision not to hire. What's your responsibility?

- In any case where information in a consumer report is a factor in your decision — even

Facts for Business

if the report information is not a major consideration — you must follow the procedures mandated by the FCRA. In this case, you would be required to provide the applicant a **pre-adverse action disclosure** before you reject his or her application. When you formally reject the applicant, you would be required to provide an **adverse action notice**.

The applicants for a sensitive financial position have authorized you to obtain credit reports. You reject one applicant, whose credit report shows a debt load that may be too high for the proposed salary, even though the report shows a good repayment history. You turn down another, whose credit report shows only one credit account, because you want someone who has shown more financial responsibility. Are you obliged to provide any notices to these applicants?

- Both applicants are entitled to a **pre-adverse action disclosure** and an **adverse action notice**. If **any** information in the credit report influences an adverse decision, the applicant is entitled to the notices — even when the information isn't negative.

Non-compliance

There are legal consequences for employers who fail to get an applicant's permission before requesting a consumer report or who fail to provide pre-adverse action disclosures and adverse action notices to unsuccessful job applicants. The FCRA allows individuals to sue employers for damages in federal court. A person

who successfully sues is entitled to recover court costs and reasonable legal fees. The law also allows individuals to seek punitive damages for deliberate violations. In addition, the Federal Trade Commission, other federal agencies, and the states may sue employers for noncompliance and obtain civil penalties.

For More Information

For your copy of the FCRA, contact the FTC. The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

Your Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to sba.gov/ombudsman.

FEDERAL TRADE COMMISSION	ftc.gov
1-877-FTC-HELP	FOR THE CONSUMER

Federal Trade Commission
Bureau of Consumer Protection
Division of Consumer and Business Education

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